

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CONTEL CELLULAR OF KENTUCKY,)	
INC. FOR ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT)	CASE NO.
AN ADDITIONAL CELL FACILITY IN THE LEXINGTON,)	95-088
KENTUCKY METROPOLITAN STATISTICAL AREA)	
(SPINDLETOP CELL FACILITY))	

O R D E R

On March 9, 1995, Contel Cellular of Kentucky, Inc. ("Contel Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower to serve the Lexington Metropolitan Statistical Area ("Lexington MSA"). The Lexington MSA includes Bourbon, Clark, Fayette, Jessamine, Scott, and Woodford counties in Kentucky. Contel Cellular has requested authorization to construct a cell site in Fayette County, Kentucky. Contel Cellular was previously granted authority to operate a cellular radio telecommunications system in the Lexington MSA in Case No. 10169.¹

The proposed cell site consists of a self-supporting antenna tower, not to exceed 185 feet in height, to be located at 4550

¹ Case No. 10169, The Application of Louisville Cellular Telephone Company, Bluegrass Cellular Telephone Partners and Central Kentucky Cellular Telephone Company for Approval of the Transfer of Ownership and Control of the Public Service Businesses of Louisville Cellular Telephone Company and Bluegrass Cellular Telephone Partners to Central Kentucky Cellular Telephone Company.

(Rear) Iron Works Road, Lexington, Fayette County, Kentucky ("the Spindletop cell site"). The coordinates for the Spindletop cell site are North Latitude 38° 08' 19" by West Longitude 84° 31' 49".

Contel Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Spindletop cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the Spindletop cell site's construction is exempt from local zoning ordinances. However, Contel Cellular has notified the Lexington-Fayette Urban County Government Planning Commission of the proposed construction. Contel Cellular has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the Spindletop cell site. The FAA and KAZC applications are still pending.

Contel Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Spindletop cell site has been notified of the pending construction. The notice solicited comments and informed the property owners and residents of their right to intervene. On April 10, 1995, the Commission received a letter from the Lexington-Fayette Urban County Government ("LFUCG") which stated concerns regarding this

site. On April 14, 1995, the Commission ordered Contel Cellular to respond to the LFUCG's concerns. Subsequently, Contel Cellular and the LFUCG filed correspondence memorializing Contel Cellular's agreement to shift the location of the proposed facility 10 feet in a westerly direction, to plant pine trees to screen the facility, and to send the LFUCG a copy of its revised Site Development Plan when the plan was filed with the Commission. On April 26, 1995, the Commission received a letter from the LFUCG stating its intent not to intervene in this case. On May 18, 1995, Contel Cellular filed, as an amendment to its application, a copy of its revised Site Development Plan. To date, no intervention requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine the proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Contel Cellular should notify the Commission if it does not use this antenna tower to provide cellular telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Contel Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Contel Cellular

should be granted a Certificate of Public Convenience and Necessity to construct and operate the Spindletop cell site under its currently approved tariff.

IT IS THEREFORE ORDERED that:


1. Contel Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Spindletop cell site.


2. Contel Cellular shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the Spindletop cell site construction within 10 days of receiving these decisions.

3. Contel Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 14th day of June, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director